

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Terry Ferrell,

Case No. 1:06 CV 1676

Petitioner,

MEMORANDUM OPINION
AND ORDER

-VS-

JUDGE JACK ZOUHARY

Stuart Hudson,

Respondent.

This matter is before the Court on the Magistrate's Report and Recommendation (Doc. No. 11) and *pro se* Petitioner's Objections (Doc. No. 12).

The Magistrate Judge dismissed Petitioner's several arguments for a Writ of Habeas Corpus. Specifically, the Magistrate found the claims: (1) of ineffective assistance of trial counsel was procedurally defaulted (p. 9); (2) that he was denied a trial transcript lacked merit (p. 10); (3) of ineffective assistance of appellate counsel also lacked merit (p. 11); and (4) for a jury trial during the sentencing phase of his trial failed as a matter of law (p. 17).

Petitioner now objects that "the Magistrate made several mistakes about known facts . . . one of the most serious . . . plac[ing] Petitioner's D.N.A. at the crime scene and not on the Petitioner's own home" This "serious" mistake was actually a recitation from the findings of fact set forth by the state court of appeals and accurately quoted on page two of the Report and Recommendation. The state appellate opinion set forth the evidence at trial:

A fresh blood stain was found on the victims' outside door frame. The DNA matched Petitioner's. Petitioner explained the blood must have been from a fight with his brother he had earlier in the day, which occurred on the side of the victims' house. Because the police had no other evidence against Petitioner, he was released.

(Doc. No. 8, Ex. E.)

The other alleged errors by the Magistrate again involve an accurate summary of the state appellate court findings or arguments that were previously recited to the Magistrate and denied. Petitioner brings nothing new to the attention of this Court that would support his Writ of Habeas Corpus. Contrary to Petitioner's conclusion that the Report "does not conform to known facts in the Petitioners [sic] criminal case," this Court concurs in each of the Magistrate's conclusions that the Writ should be denied and adopts the Report and Recommendation.

Petitioner has failed to show the existence of any set of facts upon which he could prevail. Accordingly, under 28 U.S.C. § 1915(a)(3), the Court certifies that an appeal of this action could not be taken in good faith.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

January 9, 2008